Supreme Court, U.S.
FILED
MAY 7 1980
MICHAEL RODAK, JR., CLERK

No. 79-1453

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

JOHN BREWSTER,

Appellant,

vs.

CITY OF CARBONDALE,

Appellee.

On Appeal from the Supreme Court of Illinois

MOTION TO DISMISS APPEAL
Or, in the Alternative
TO AFFIRM JUDGMENT

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Pursuant to Rule 16, paragraphs 1(a) and 1(c) of the Revised Rules of this Court, appellee moves that this appeal be dismissed or, alternatively, that the judgment of the Illinois Supreme Court be affirmed.

JURISDICTION

On January 11, 1979, the City of Carbondale issued to John Brewster, one of its residents, a "non-traffic complaint and notice to appear" alleging his violation of a City ordinance requiring certain persons to clear snow and ice from City

sidewalks abutting their property. On motion by Brewster, the Circuit Cou of Jackson County, Illinois, dismissed the complaint. The City appealed directly to the Illinois Supreme Court.

On December 20, 1979, the Illinois Supreme Court held that the ordinance and the Illinois statute which authorized it were constitutional and reversed the judgment of the Circuit Court (two Justices dissenting).

Notice of appeal to this Court was filed in the Illinois Supreme Court on March 12, 1980, and in the Circuit Court of Jackson County, Illinois, on March 13, 1980.

This appeal is brought pursuant to 28 U.S.C. Sec. 1257(2).

QUESTIONS PRESENTED

The question presented is whether the ordinance set forth herein constitutes a reasonable exercise of police power.

STATEMENT OF THE CASE

On February 9, 1979, the Circuit Court of Jackson County heard a motion to dismiss filed by the Defendant John Brewster who appeared before the Court on a "non-traffic complaint and notice to appear" filed against him by the City of Carbondale. The complaint alleged that Brewster had violated a City ordinance which required people in control of property abutting sidewalks to either remove snow or place an abrasive material on the walk. Brewster's motion to dismiss alleged that the ordinance constituted an unreasonable exercise of police power. The Court granted the motion based entirely on stare decisis. The Circuit Court, while acknowledging that the case of *Gridley* v. *City of Bloomington,* 88 Ill. 554, 30 Am. Rep. 566 (1878) was outdated, felt that it was bound by it until the Supreme Court of Illinois acted.

The City appealed directly to the Supreme Court of Illinois and, on December 20, 1979, that Court reversed the trial court, holding specifically that *Gridley* was outdated and that the state had the power to enact reasonable legislation in this area through its police power.

ARGUMENT

1. No Substantial Question Is Presented To This Court.

The issue which Brewster is attempting to bring before this Court is one which has been here on numerous occasions. An example of this is the case of *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 47 Sup. Ct. 114 (1926). This case, which is now more than fifty years old, indicates clearly that the exercise of police power by states and municipalities, has been before this Court before and indicates that the law in this area is clear and well established.

Brewster maintains that the Court is presented with a novel question. That is absurd. The issues before the trial court and before the Supreme Court of Illinois and the issues that this Court is being asked to consider are whether or not state governments and municipal corporations have police power and the manner in which they exercise it. These issues have been decided, and the law is clear and well established. Brewster maintains that this Court should consider this question because this Court has never considered a snow removal ordinance before. Brewster's argument is akin to saying this Court should consider whether or not the City should have a stop sign situated at the corner of Main and Illinois Avenues. I do not believe there are any specific decisions by this Court upholding the power of a city to erect stop signs. There may be occasions when a stop sign erected by a city is illegal. However, the law concerning the power to erect that sign and the manner in which that power must be utilized is clear. This Court cannot consider every statute and every ordinance passed into law, nor should it consider the case which Brewster now seeks to place before you.

Another reason why the case before you is not substantial is that it deals entirely with Illinois law. The law in Illinois controlling the use of streets and sidewalks by abutting property owners and placing burdens on those property owners may be

different than that of other states. Involved in such a decision is, of course, real property law, state constitutional law, and state municipal law. Jurisdictions other than Illinois may have different laws governing streets and sidewalks. This is clearly indicated by two cases cited to you by Brewster. In *McGuire* v. *District of Columbia,* 24 App. D.C. 22 (1904), the Court, in interpreting the law of that jurisdiction, specifically stated and held that the duty to remove snow from sidewalks was the burden of the municipality itself. *McGuire* v. *District of Columbia,* App. D.C. 22 at 29. The law of that jurisdiction, then, is exactly the opposite of that of Illinois, where there is no burden on municipalities to remove snow from sidewalks. This is indicated in the opinion which Brewster now seeks to reverse. Concerning this matter, the Illinois Supreme Court stated as follows:

> It cannot be disputed that keeping sidewalks free from snow and ice is closely related to and in furtherance of the public's welfare. The fact that this court has not seen fit to impose a common law duty on the municipalities to keep their streets and sidewalks clear of snow and ice. (*Lansing* v. *County of McClain,* 1978, 69 Ill. 2d 562) does not mean that those municipalities did not undertake by ordinance to require that sidewalks be kept clear of snow and ice in the interest of the public safety and welfare. *City of Carbondale* v. *Brewster,* 78 Ill. 2d 111 (at 78 Ill. 2d 117, 118), 398 N.E.2d 29 (p. 5a of Appendix to the Brewster's Jurisdictional Statement).

While a complete survey of the law of the jurisdictions within the United States has not been made, it is clear that the common law or, perhaps, statutory law of the jurisdictions may differ. Thus, a decision interpreting the common and statutory law of Illinois would have little or no impact on other jurisdictions and prohibits this case from stating a substantial question for this Supreme Court.

As is indicated hereinabove, the law concerning the valid exercise of police power by states and municipal corporations is clear and well established. As this Court held in *Village of Euclid* v. *Ambler Realty* (supra) and as the Supreme Court in Illinois held, the police power is an attribute of sovereignty which was reserved to the states by the Constitution of the United States. That police power may be exercised to protect the public health, safety, morals, and general welfare or convenience of the state or city and will be upheld if the legislation bears a reasonable relationship to the interests which it seeks to protect and utilizes a reasonable method to accomplish that objective. Simply stated, the exercise of police power must be done in a reasonable manner. The City would submit to this Court that the reasonableness of an ordinance on snow removal can best be determined on a local basis. What is reasonable in Carbondale, Illinois, might not be reasonable in Miami, Florida. What is reasonable in Miami might not be reasonable in Juneau, Alaska. However, the jurisdictions in Illinois, Florida, and Alaska can determine whether or not the attempts at utilization of police powers are reasonable within their jurisdictions in compliance with the law as established by the Supreme Court of the United States. This Court has already established that law. In the case before you Illinois has properly applied it, and has done so in a reasonable and fair manner. This Court cannot determine the reasonableness of all ordinances passed throughout the United States and should not be asked to do so. The question before you clearly is not substantial and should not be considered by this Court.

2. **The Decision of the Illinois Supreme Court Should Be Affirmed In That This Case Does Not Merit Plenary Consideration By This Court.**

Should the Court conclude that this case is properly here on appeal, the judgment by the Supreme Court of Illinois should be affirmed summarily since the contention by Brewster does not merit plenary consideration.

The law concerning the existence of and the exercise of police power by states and municipalities is clear and well established and has been at least since *Euclid* (supra). That law has been summarized hereinabove and need not be repeated at this point. Further, it was clearly summarized, adopted and followed by the Illinois Supreme Court in its decision. Police power does exist for municipalities and cities and, if exercised in a reasonable manner, is valid and constitutional. In the case before you, the ordinance of the City of Carbondale clearly meets the test of reasonableness, is presumed to be valid, and summary affirmation of the Illinois Supreme Court decision is required.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed or the judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

John Womick

JOHN WOMICK
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510 West Main Street
Carbondale, Illinois 62901
618/529-2440

CERTIFICATE OF SERVICE

I, John Paul Womick, a member of the Bar of the Supreme Court of the United States and counsel of record for the City of Carbondale, appellee herein, hereby certify that on May 6, 1980, pursuant to Rule 33, Rules of the Supreme Court, I served three copies of the attached Motion To Dismiss Appeal Or, in the Alternative To Affirm Judgment on each of the parties herein, as follows:

On John Brewster, appellant herein, by depositing such copies in the United States Post Office, St. Louis, Missouri, with first class postage prepaid, properly addressed to the post office address of Edward J. Kionka, the above-named Brewster's counsel of record, of 632 North Main Street, Columbia, Illinois 62236.

All parties required to be served have been served.

Dated May 6, 1980.

John Womick

JOHN WOMICK
Attorney for the City of Carbondale
510 West Main Street
Carbondale, Illinois 62901
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APPENDIX

APPENDIX A

United States Constitution, Amendment XIV, §1:

> . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Revised Statutes, Ch. 24 § 11-80-13 (1977):

> The corporate authorities of each municipality may regulate the use of sidewalks, the construction, repair, and use of openings in sidewalks, and all vaults and structures thereon and thereunder, including telephone booths, and may require the owner or occupant of any premises to keep the sidewalks abutting the premises free from snow and other obstructions.

Revised Code of City of Carbondale, Article XII:

Article XII. Responsibility for Removal of Snow and Ice.

Section 17-12-1. Definitions.

> The following definitions shall apply in the interpretation and enforcement of this article:
>
> A. "Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for the purposes of vehicular travel.
>
> B. "Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.
>
> C. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

D. "Business Day" is any day not a Sunday or a national holiday.

E. "Business Hours" are the hours between 8:00 a.m. and 5:00 p.m. on any business day. (Ord. No. 78-10)

Sec. 17-12-2. Snow and Ice to be Removed from Sidewalks by Private Persons.

A. Every person, partnership, corporation, joint-stock company, or syndicate in charge or control of any building or lot of land within the City fronting or abutting on a paved sidewalks, whether as owner, tenant, occupant, lessee, or otherwise, shall remove and clear away, or cause to be removed and cleared away, snow and ice from a path of at least thirty inches in width from so much of said sidewalk as is in front of or abuts on said building or lot of land.

1. Except as provided in subsection B hereof, snow and ice shall be so removed from sidewalks in all business districts within the City by twenty-four (24) hours after the cessation of any fall of snow, sleet, or freezing rain.

2. Except as provided in subsection B hereof, snow and ice shall be so removed from all other sidewalks within the City twenty-four (24) hours after the cessation of any fall of snow, sleet, or freezing rain.

B. However, in the event snow and ice on a sidewalk has become so hard that it cannot be removed without likelihood of damage to the sidewalk, the person or entity charged with its removal shall, within the time mentioned in subsection A hereof, cause enough sand or other abrasive to be put on the sidewalk to make travel thereon reasonably safe; and shall then, as soon thereafter as weather permits, cause a path in said sidewalk of at least thirty inches in width to be thoroughly cleaned. (Ord. No. 78-10)

Sec. 17-12-3. Removal of Snow and Ice From Public Transportation Systems.

Every person, partnership, corporation, joint-stock company, or syndicate operating a public transportation system within the City employing motor buses, trackless trolleys, trains, or street cars shall remove and clear away, or cause to be removed and cleared away, snow and ice from its passenger loading and unloading areas and its tracks, if any. Snow and ice from its passenger loading and unloading areas shall be removed and cleared away within twenty-four (24) hours after the cessation of any fall of snow, sleet, or freezing rain, except that if the snow and ice has become so hard that it cannot be removed without likelihood of damage to the underlying surface, such operator shall, within the said twenty-four (24) hour period, cause enough sand or other abrasive to be put on the passenger loading and unloading area to make walking thereon reasonably safe. He shall then, as soon thereafter as weather permits, cause said area to be thoroughly cleaned. (Ord. No. 78-10)

Sec. 17-12-4. Depositing of Snow and Ice Restricted.

No person, partnership, corporation, joint-stock company, or syndicate shall deposit or cause to be deposited any snow and ice on or against a fire hydrant or on any sidewalk, roadway, or loading or unloading areas of a public transportation system, except that snow and ice may be windrowed on public roadways incident to the cleaning thereof or windrowed on curbs incident to the cleaning of sidewalks in business districts. (Ord. No. 78-10)

Sec. 17-12-5. City Manager's Authority.

The City Manager of the City of Carbondale is hereby authorized on behalf of the City to cause sidewalks to be cleared upon the request of the person or entity charged

with snow and ice removal. Any person or entity whose sidewalk is cleared pursuant to this section shall reimburse the City for the costs of such clearing. (Ord. No. 78-10)

Sec. 17-12-6. Penalties.

Any person, partnership, corporation, joint-stock company, or syndicate who violates any provision of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not less than $10.00 and not exceeding $500.00. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such thereunder. (Ord. No. 78-10)

APPENDIX B

Citation: 78 Ill.2d 111, 34 Ill. Dec. 838, 398 N.E. 2d 829.

No. 51711—Supreme Court of Illinois

City of Carbondale, a municipal corporation,
Plaintiff-Appellant,

v.

John Brewster,
Defendant-Appellee.

Appeal from Circuit Court, Jackson County

Opinion filed December 20, 1979

MR. JUSTICE MORAN delivered the opinion of the court:

An ordinance enacted by the city of Carbondale (plaintiff) requires, under threat of fine, that persons in control of property fronting or abutting on paved sidewalks remove snow and ice from such sidewalks or, if the snow and ice is too hard for removal, to cover them with abrasive materials within 24 hours after a snowfall or freezing precipitation. An Illinois statute allows municipalities to require the owner or occupant of any premises to keep the sidewalks abutting the premises free from snow and other obstructions. (Ill. Rev. Stat. 1977, ch. 24, par. 11-80-13). In dismissing a complaint against defendant for violation of the Carbondale ordinance, the circuit court of Jackson County held the statute and ordinance invalid. Plaintiff has appealed directly to this court pursuant to Rule 302(a). 58 Ill. 2d R. 302(a).

Plaintiff contends initially that the circuit court erred because the basis for its holding had not been raised and, in fact, had been waived by defendant. The circuit court, in its written order, expressly based its decision on *Gridley* v. *City of Bloomington* (1878), 88 Ill. 554, wherein the court struck down a similar municipal ordinance, and held that the ordinance could not be upheld either under the principle according to which assessments are made or under the police power. (88 Ill. 554, 557.) We note that, in his motion to dismiss, defendant contended *inter alia* that the ordinance is an unreasonable exercise of the police power. It is evident, therefore, that this contention of the plaintiff is without merit.

Plaintiff next contends that the statute and ordinance are valid exercises of the police power. As stated, the *Gridley* court held the enactment of such an ordinance to be an invalid exercise of police power. This holding was adhered to shortly thereafter by a divided court in *City of Chicago* v. *O'Brien* (1884), 111 Ill. 532, which had before it precisely the same issue. Recently, the concept of police power in Illinois has been more thoroughly considered.

> "The police power is an attribute of sovereignty inherent in every government. It has been reserved to all the States by the constitution of the United States. [Citations.] While it is not without limitation and may not be exercised arbitrarily, the legislatures of the States have broad discretion in the passage of statutes in its exercise. [Citation.] When the legislature has considered a problem and enacted legislation thereon, the act is presumptively a valid exercise of the power and the burden rests upon the one assailing the statute to show that it is without reasonable basis and entirely arbitrary. [Citations.]" (*Memorial Gardens Association, Inc.* v. *Smith* (1959), 16 Ill. 2d 116, 123.)

The police power may be exercised to protect the public health, safety, morals, and general welfare or convenience. (*Sherman-*

Reynolds, Inc. v. *Mahin* (1970), 47 Ill. 2d 323, 326; *Clarke* v. *Storchak* (1943), 384 Ill. 564, 577.) To be a valid exercise of police power, the legislation must bear a reasonable relationship to one of the foregoing interests which is sought to be protected, and the means adopted must constitute a reasonable method to accomplish such objective. (*Sherman-Reynolds, Inc.* v. *Mahin* (1970), 47 Ill. 2d 323, 327; *Schuringa* v. *City of Chicago* (1964), 30 Ill. 2d 504, 509.) Although the determination of reasonableness is a matter for the court, the legislature has broad discretion to determine not only what the interests of the public welfare require but what measures are necessary to secure such interest. (*Memorial Gardens Association, Inc.* v. *Smith* (1959), 16 Ill. 2d 116, 127; *Clarke* v. *Storchak* (1943), 384 Ill. 564, 577.) The court will not disturb a police regulation merely where there is room for a difference of opinion as to its wisdom, necessity and expediency. (*Schuringa* v. *City of Chicago* (1964), 30 Ill. 2d 504, 515.) The reasonableness requirement also applies to ordinances passed pursuant to legislative authority. *Petterson* v. *City of Naperville* (1956), 9 Ill. 2d 233, 244.

As it relates to real property, the police power is the vehicle by which the free and unencumbered use thereof may be adversely affected. Thus, a zoning ordinance will be upheld as a proper exercise of the police power if it bears any substantial relationship to the public health, safety, comfort or welfare. (*E.g., La Grange State Bank* v. *County of Cook* (1979), 75 Ill. 2d 301, 307.) Similarly, a residential land subdivider may properly be required, as a condition to approval of the plat, to provide curb and gutter and suitable storm-water-drainage facilities (*Petterson* v. *City of Naperville* (1956), 9 Ill. 2d 233), or to make contributions of land, or money in lieu of land, to be used for school and park sites (*Krughoff* v. *City of Naperville* (1977), 68 Ill. 2d 352). As the court in *Petterson* stated:

> "The privilege of the individual to use his property as he pleases is subject always to a legitimate exercise of the police power under which new burdens may be imposed

upon property and new restrictions placed on its use when the public welfare demands." *Petterson* v. *City of Naperville* (1956), 9 Ill. 2d 233, 247.

The *Gridley* decision was based largely upon the court's observation that a lot owner has no greater interest in the street or sidewalk abutting his property than any other member of the municipality. This court has since reiterated that the sidewalk is considered a part of the street which has been set aside for pedestrian use. (*Lansing* v. *County of McLean* (1978), 69 Ill. 2d 562, 572; *City of Elmhurst* v. *Buettgen* (1946), 394. Ill. 248, 252.) Continuing with this notion, the court, in *O'Brien,* denounced a snow-removal ordinance as laying a purely public burden upon a private individual, without providing for an exercise of the right of eminent domain or proper proceedings to enforce special assessments or special taxation. *City of Chicago* v. *O'Brien* (1884), 111 Ill. 532, 537.

We do not think that the ordinance here can properly be said to constitute a taxation scheme. Rather, what is involved is the imposition of regulatory provisions by way of the police power through an ordinance which requires persons in control of property abutting upon sidewalks or keep them clear of snow and ice. (See *Petterson* v. *City of Naperville* (1956), 9 Ill. 2d 233, 249.) Furthermore, when police power regulations are reasonable and adapted to the objects sought to be accomplished, they are not unconstitutional even though private property may be injured, interfered with, or damaged without the payment of compensation. (*Sherman-Reynolds, Inc.* v. *Mahin* (1970), 47 Ill. 2d 323, 328.) The court in *Sherman-Reynolds* upheld provisions of the Illinois Income Tax Act which require employers to withhold tax from compensation paid to their employees. The withholding provisions were upheld even though an employer's compliance required it to advance, out of its own property, substantial sums for necessary equipment, supplies, personnel and professional advice and assistance.

From the foregoing discussion, it becomes evident that *Gridley* and *O'Brien* should not be blindly adhered to. More recent developments have witnessed a general increase in the scope of the police power, as well as considerable erosion of the direct underpinnings of those two cases. Moreover, our research discloses only two other reported decisions in accord with *Gridley* and *O'Brien*. (*State* v. *Jackman* (1898), 69 N.H. 318, 41 A. 347; *McGuire* v. *District of Columbia* (1904), 24 App. D.C. 22.) The great majority of jurisdictions have instead upheld ordinances similar to that involved here, many of them expressly declining to follow the two Illinois decisions. (*In re Appeal of Goddard* (1835), 33 Mass. (16 Pick.) 504; *Village of Carthage* v. *Frederick* (1890), 122 N.Y. 268, 25 N.E. 480; *Town of Clinton* v. *Welch* (1896), 166 Mass. 133, 43 N.E. 1116; *City of Lincoln* v. *Janesch* (1902), 63 Neb. 707, 89 N.W. 280 (repair of sidewalks); *State* v. *McMahon* (1903), 76 Conn. 97, 55 A. 591; *City of Helena* v. *Kent* (1905), 32 Mont. 279, 80 P. 258; *State ex rel. Egan* v. *McCrillis* (1907), 28 R.I. 165, 66 A. 301; *Kansas City* v. *Holmes* (1918), 274 Mo. 159, 202 S.W. 392; *State* v. *Small* (1927), 126 Me. 235, 137 A. 398; *Rich* v. *Rosenshine* (1947), 131 W. Va. 30, 45 S.E.2d 499; *State* v. *Giacchetto* (1979), 166 N.J. Super. 351, 399 A.2d 1031.) Based upon the development of the police power in Illinois and upon what we consider to be the better reasoning of cases from other jurisdictions that have upheld similar legislation, *Gridley* and *O'Brien* are hereby overruled.

It cannot be disputed that keeping sidewalks free from snow and ice is closely related to and in furtherance of the public's welfare. The fact that this court has not seen fit to impose a common law duty on municipalities to keep their streets and sidewalks clear of snow and ice (*Lansing* v. *County of McLean* (1978), 69 Ill. 2d 562) does not mean that those same municipalities cannot undertake by ordinance to require that sidewalks be kept clear of snow and ice in the interest of the public safety and welfare. Neither can it be said that the means

chosen to accomplish the object of the legislation—requiring individuals to keep clear the portion of the sidewalk abutting the property under their control—is so arbitrary or unreasonable as to constitute an invalid exercise of the police power. The burden is not so manifestly disproportional or unrelated to a legitimate classification as to amount to unjust discrimination. The expenditure of time and effort, and perhaps expense, which the ordinance exacts is incidental to the enjoyment of property, just as are many other burdens, such as those mentioned earlier, imposed by the legislative branch. Furthermore, the law does not demand absolute equality. By making the requirement proportional to the length of property frontage, the legislation, in our opinion, is in compliance with constitutional requirements.

Defendant's final objection to the legislation is that it unconstitutionally imposes absolute liability for its violation. Defendant cites no constitutional provision in support, and we find that his argument is without merit.

For the foregoing reasons, the judgment of the circuit court of Jackson County is reversed, and the cause is remanded for further proceedings.

Judgment reversed;
cause remanded.

MR. JUSTICE WARD, dissenting:

I dissent. Although the language of the majority's opinion is couched in terms of the police power, I find it more appropriate in considering this question of compulsion to identify the problem as one of due process, as it was in *City of Chicago* v. *O'Brien* (1884), 111 Ill. 532, 537. The majority's opinion, by speaking only in terms of police power, tends to mute the issue of due process, which is stated very strongly and explicitly in *O'Brien*. With regard to a snow-removal ordinance of the city of Chicago, the court in *O'Brien* made this observation:

> "The lot owner is held responsible solely and simply for the accident of owning property near the nuisance. He many have no more actual control of the street, or necessity to use it, than if his property were miles away; still, he is held responsible for a result he could not control, and to the production of which he did not even theoretically contribute. The *gist* of the whole argument is merely that it is convenient to hold him responsible. It is not perceived why it would not be equally convenient to hold him responsible for the entire police government of so much of the street." 111 Ill. 532, 537.

The majority refers to *Petterson* v. *City of Naperville* (1956), 9 Ill. 2d 233, and *Krughoff* v. *City of Naperville* (1977), 68 Ill. 2d 352, as supporting its position. In those cases a developer was required to construct facilities or to contribute land or money to alleviate conditions created by his proposed development. The abutting owner is not in that position. In some cases, though by no means all, the owner may use the sidewalk in front of his property more frequently than do members of the general public, but he has, of course, no right to its exclusive use, and unlike the subdivider he has not created the situation which he is called upon to correct.

In *Lansing* v. *County of McLean* (1978), 69 Ill. 2d 562, this court recently reaffirmed the doctrine of *Strappelli* v. *City of Chicago* (1939), 371 Ill. 72, that a municipality is not liable in tort for injuries arising out of the failure of the municipality to remove a natural accumulation of snow from the street or sidewalk. We noted in *McLean* that a landowner enjoys the same freedom from liability with respect to his own property. (69 Ill. 2d 562, 569-72.) The majority decision here results in an anomalous situation in that it approves the imposition of a duty upon the abutting owner with respect to the municipality's property, that is, the sidewalk, to which the municipality itself is not subject. Further, and oddly, it imposes upon the owner a twofold liability: if, on the one hand, he fails to remove the

snow, then in addition to suffering a fine, he may be exposed to a suit for civil damages, since violation of an ordinance may be regarded as creating a cause of action in tort. If, on the other hand, the owner does attempt to comply with the ordinance, he is exposed to the possibility of an action charging him with having negligently created a condition, such as ice on a cleared walk or a pile of snow, which injured the plaintiff. *Cf. Riccitelli* v. *Sternfeld* (1953), 1 Ill. 2d 133.

To be valid, a regulation made under the police power must be "reasonable and adapted to the scope and object sought to be accomplished." (*Sherman-Reynolds, Inc.* v. *Mahin* (1970), 47 Ill. 2d 323, 328.) If, as the majority now holds, an ordinance requiring an owner to remove snow from the sidewalk is not invalid *per se,* it will still be necessary, of course, that the provisions of such an ordinance be reasonable.

The majority's opinion does no more than to state simply and generally the conclusion that the ordinance here is not an unconstitutional exercise of the police power. I consider the provision requiring the owner or other person to clear a 30-inch path within 24 hours "after the cessation of any fall of snow, sleet or freezing rain" to be, in the weather area involved here, uncertain, vague, and not reasonably susceptible to determination by the persons affected. An ordinance or statute of this character must of course be clear and definite in the obligation that it imposes, and reasonably capable of being observed. The ordinance here cannot be said to satisfy that requirement, especially when the consequence of a violation may be the creation of a civil cause of action against the landowner.

MR. JUSTICE CLARK joins in this dissent.

APPENDIX C

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL DISTRICT
JACKSON COUNTY, ILLINOIS

No. 79-OV-59

The City of Carbondale, a municipal corporation,
Plaintiff,

v.

John Brewster,
Defendant.

DECISION

This matter coming on for hearing on the Defendant's Motion to Dismiss and the City's Motion to Strike the Motion, and the Court having been supplied with legal authority by both parties, and having considered the arguments of counsel, it is Hereby Ordered that the Defendant's Motion to Dismiss is granted and the City's Motion is, accordingly denied.

The Court has reflected upon the various arguments raised by the parties with regard to this rather unique legislation, wherein private citizens are required to contribute services to maintain the public way. It is contended by the defendant that this burden violates the Federal Constitution. The City has denied this argument and directed the Court's attention to numerous cases in other jurisdictions which have upheld the validity of such ordinances. Rather than deal with the merits of these arguments, the Court has concentrated its attention upon Illinois decisions in this field in the leading Illinois decision of

Gridley v. Bloomington 84 Ill. 554, 1878 the Court considered a municipal ordinance requiring, as here, the citizen to remove snow from the public right of way. The Court concluded that such an ordinance (which was apparently predicated upon statutory authority which preceded Chapter 24 Ill. Rev. Stat. Sec. 11-80-13) was invalid. That decision determined that neither taxing authority nor the police power justified such legislation. Subsequently, in City of Chicago v. Crosby, ____ Ill. 538 (1884) and in City of Chicago v. McDonald, 111 Ill. App. 436 (1903) the Gridley Case, Supra, was cited as controling authority.

The City argues that age has undermined the reasoning of the Gridley decision and that it is no longer controling law. It points out how police powers have expanded generally. However, as long as the Gridley decision stands it seems that its results, if not its reasoning, should be followed.

Accordingly, it is this Court's conclusion that such legislation whether adopted by the State or a Home Rule Municipality flies in the face of controling judicial decisions and is, therefore, invalid.

ENTER: /s/ Brocton Lockwood
Associate Circuit Judge

Dated: 2/9/79